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SUPERIOR COURT  
2010 JUL -9 AM 10:34  
JEANNE HENS, CLERK  
BY: S. Baggett

IN THE SUPERIOR COURT OF STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

v.

STEVEN CARROLL DEMOCKER,

Defendant.

P1350  
CR 2008-1339

The Honorable Warren R. Darrow

STATE'S RESPONSE TO DEFENDANT'S  
MOTION FOR REEXAMINATION OF  
CONDITIONS OF RELEASE

The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and her deputy undersigned, hereby submits its Response to Defendant's Motion for Reexamination of Conditions of Release. Defendant's Motion for Reexamination of Conditions of Release should be denied because Defendant has failed to offer any material fact not previously considered by Judge Lindberg previously.

**ARGUMENT:**

***Defendant's Conditions of Release should not be amended.***

*Ariz. R. Crim P.*, Rule 7.4(b) provides that "[a]ny person remaining in custody may move for reexamination of the conditions of release whenever the person's case is transferred to a different court or the motion alleges the existence of material facts not previously presented to the court." The State acknowledges that due to the transfer of this case to a

1 different court, Defendant has a right to request a reduction in the bond amount. However, it  
2 is respectfully requested that this Court defer to Judge Lindberg's judgment on the matter  
3 when considering the extensive information previously provided to him.

4 During December 2008 and January 2009, the Court heard nearly four full days of  
5 testimony regarding the State's request to hold Defendant without bond. In addition, the Court  
6 twice heard additional testimony and argument regarding the State's evidence as it was  
7 presented to the grand jury during the hearings on Defendant's two motions for new finding of  
8 probable cause. The Court also heard argument regarding GPS monitoring at a hearing on  
9 March 10, 2009.

11 The Court found that Defendant had the opportunity to commit the crimes based upon  
12 Defendant's proximity to the scene, the time frame in which the murder occurred, and  
13 Defendant's lack of alibi. After consideration, the Court determined that \$2,500,000.00 cash or  
14 security bond was appropriate.

16 After the ruling was issued, Defendant quickly filed a Motion for Reexamination of  
17 Conditions of Release which was denied by the Court without evidentiary hearing on April 30,  
18 2009. Defendant filed another motion to reexamine conditions of release in August, 2009.  
19 Hearings were held and the motion was denied November 21, 2009. In December, 2009  
20 Defendant filed yet another motion to reconsider his conditions of release. Hearings were held  
21 in January, 2010 and once again the Court denied the defense motion.

23 After the State dismissed its allegation of the death penalty, on May 28, 2010 the Court  
24 modified Defendant's release conditions by reducing the bond amount from \$2,500,000 to  
25 \$1,000,000. Note that this decision was made a mere 42 days ago  
26

1 The State's evidence was fully considered by the Court during the *Simpson* Hearing ,  
2 the hearings for new finding of probable cause and hearings on Defendant's prior motions to  
3 reexamine his conditions of release. It is respectfully submitted that this Court should defer to  
4 Judge Lindberg's prior findings.

5 Alternatively, Defendant can ask for a reexamination of his conditions of release if  
6 there are "material facts" which were not previously presented to the Court. A "material  
7 fact" is defined as "a fact that is significant or essential to the issue or the matter at hand."  
8 *Black's Law Dictionary*, 484 (7<sup>th</sup> abridged ed. 2000).

9 A new material fact set forth in this motion is that the trial will last longer than  
10 originally anticipated due to Judge Lindberg's recent illness and the attendant appointment of  
11 an alternate judge to preside over the trial. When considering the severity of the charges (first  
12 degree murder), the two month delay does not warrant the reexamination of the conditions of  
13 release which were carefully considered by Judge Lindberg previously.

14 Defendant also claims that dismissal of the death penalty is a new material fact to be  
15 considered. This factor was considered by Judge Lindberg when he reduced Defendant's bond  
16 from \$2,500,000 to \$1,000,000 on May 28, 2010. It is noted for this Court's consideration that  
17 the State dismissed the death penalty allegation at the request of the victims, including Ruth K.  
18 and John K. The allegation was not dismissed due to any new or perceived "weakness" in the  
19 State's case.

20 Defendant also claims that he is too tired to meaningfully assist in his own defense  
21 due to travel on trial days. This is not a new material fact as contemplated by the statute.  
22 Further, Defendant has failed to present any instance where his incarceration has prevented  
23 him from meaningfully assisting in his own defense.  
24  
25  
26

1 Victims Ruth K. and John K. continue to oppose any change in the conditions of  
2 release.

3 Due to the new trial schedule, the YCSO Jail has made arrangements for Defendant to  
4 have visitation every Monday from 7:30 a.m. through 9:00 a.m. During the trial schedule  
5 under Judge Lindberg, visitation was every other week on the non-trial Tuesdays.  
6

7 **CONCLUSION:**

8 After hearing testimony and argument on numerous motions regarding Defendant's  
9 release conditions, the strength of the State's case, and evidence regarding Defendant's intent  
10 to flee, Judge Lindberg recently determined that \$1,000,000 bail was appropriate. Defendant  
11 has failed to present the existence of any "material facts" related to release conditions not  
12 previously considered by Judge Lindberg. It is respectfully requested that this Court defer to  
13 Judge Lindberg's May 28, 2010 ruling and deny Defendant's most recent Motion for  
14 Reexamination of Conditions of Release.  
15

16 RESPECTFULLY SUBMITTED this 9th day of July, 2010.

17 Sheila Sullivan Polk  
18 YAVAPAI COUNTY ATTORNEY

19 By: 

20 Joseph C. Butner  
21 Deputy County Attorney

22 COPIES of the foregoing delivered this  
23 9th day of July, 2010, to:

24 Honorable Warren R. Darrow  
25 Yavapai County Superior Court  
26 (hand delivered)

AND

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